

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and
SOUND UNITED, LLC,

Defendants.

C.A. No. 22-1377-MN-JLH

C.A. No. 22-1378-MN-JLH

MASIMO CORPORATION, CERCACOR
LABORATORIES, INC.,

Counter-Claimants,

v.

APPLE INC.,

Counter-Defendant.

JOINT MOTION TO AMEND THE CASE SCHEDULE

Plaintiff and counter-defendant Apple Inc. (“Apple”), defendant and counter-claimant Masimo Corporation (“Masimo”), defendant Sound United, LLC (“Sound United”), and counter-claimant Cercacor Laboratories, Inc. (“Cercacor”) (collectively, the “parties,” and individually, each a “party”) respectfully submit this joint motion to modify certain dates of the Scheduling Orders entered by the Court on May 25, 2023 [D.I. 103 (-1377) & D.I. 92 (-1378)].

There is good cause for the requested modification of the Scheduling Order because the modification will allow the parties to complete ESI productions prior to the close of fact discovery and to sequence depositions such that, for appropriate witnesses, the deposition may follow completion of the relevant ESI production. Given the parties’ need to extend the deadline for

completing fact discovery, the parties further require a commensurate extension of the remaining case deadlines. The parties have endeavored to propose limited extensions to try to minimize the impact on the current case schedule.

Accordingly, the parties jointly and respectfully request that the Court grant this motion and amend the Scheduling Orders [D.I. 103 (-1377) & D.I. 92 (-1378)] to reflect the below proposed dates:

EVENT	Current Deadline	New Deadline
Parties to identify 15 opposing witnesses they can depose before October 19, 2023	N/A	Sept. 19, 2023
Deadline for the completion of all email production (§8(b))	N/A	Oct. 5, 2023
Parties to depose witnesses identified on September 19, 2023 (subject to witness availability)	N/A	Oct. 19, 2023
Deadline for the close of fact discovery (§8(a))	Sept. 21, 2023	Nov. 9, 2023
Deadline for opening expert reports for each party that bears the initial burden of proof (§8(f)(i))	Oct. 4, 2023	Nov. 22, 2023
Deadline for rebuttal expert reports (§8(f)(i))	Oct. 24, 2023	Dec. 15, 2023
Deadline for reply expert reports (§8(f)(i))	Nov. 6, 2023	Jan. 5, 2023
Interim Status Report (§15)	Nov. 9, 2023	Jan. 12, 2023
Deadline for the completion of expert discovery (§8(f)(iv))	Nov. 17, 2023	Jan. 30, 2024
Deadline for the parties to file all case dispositive and <i>Daubert</i> motions, as well as an opening brief, statement of facts, and affidavits, if any (§16)	Nov. 22, 2023	Feb. 5, 2024
Deadline for the parties to oppose case dispositive and <i>Daubert</i> motions (§16)	Dec. 8, 2023	Feb. 21, 2024
Deadline for the parties to reply to case dispositive and <i>Daubert</i> motions (§16)	Dec. 15, 2023	Feb. 28, 2024
Deadline for parties to file joint letter (no longer than six pages single-spaced)	10 days before Jan. CMC	10 days prior to Mar. CMC
Case Management Conference	Jan. __, 2024	Mar. [], 2024

EVENT	Current Deadline	New Deadline
Deadline to serve a draft pretrial order (§19; L.R. 16.3(d)(1))	TBD	TBD
Deadline for parties to serve motions <i>in limine</i> (§18)	TBD	TBD
Deadline for parties to serve oppositions to motions <i>in limine</i> (§18)	TBD	TBD
Deadline for parties to serve replies to motions in limine (§18)	TBD	TBD
Deadline to serve response to draft pretrial order (§19; L.R. 16.3(d)(1))	TBD	TBD
Deadline for parties to file joint pretrial order (§18)	7 days prior to Pretrial Conference	7 days prior to Pretrial Conference
Deadline for the parties to file proposed jury instructions, voir dire, and verdict forms (§20)	7 days prior to Pretrial Conference	7 days prior to Pretrial Conference
Pretrial Conference (§20)	TBD	TBD
Trial (§21)	TBD	TBD

POTTER ANDERSON & CORROON LLP

/s/ David E. Moore

David E. Moore (#3983)

Bindu A. Palapura (#5370)

POTTER ANDERSON & CORROON LLP

Hercules Plaza, 6th Floor

1313 N. Market Street

Wilmington, DE 19801

Tel: (302) 984-6000

dmoore@potteranderson.com

bpalapura@potteranderson.com

PHILLIPS, McLAUGHLIN & HALL, P.A.

By: /s/ Megan C. Haney

John C. Phillips, Jr.

Megan C. Haney

PHILLIPS, McLAUGHLIN & HALL, P.A.

1200 N. Broom Street

Wilmington, DE 19806

jcp@pmhdelaw.com

mch@pmhdelaw.com

OF COUNSEL:

John M. Desmarais

Cosmin Maier

Jordan N. Malz

Kerri-Ann Limbeek

DESMARIS LLP

230 Park Avenue

New York, NY 10169

Tel: (212) 351-3400

OF COUNSEL:

Joseph R. Re

Stephen C. Jensen

Stephen W. Larson

Jared C. Bunker

Benjamin A. Katzenellenbogen

Douglas B. Wentzel

Kendall M. Loebbaka

KNOBBE, MARTENS, OLSON & BEAR, LLP

2040 Main Street, 14th Floor

Peter C. Magic
DESMARAIS LLP
101 California Street
San Francisco, CA 94111
Tel: (415) 573-1900

Jennifer Milici
Leon B. Greenfield
Dominic Vote
**WILMER CUTLER PICKERING HALE
AND DORR LLP**
2100 Pennsylvania Avenue NW
Washington, DC 20037
Tel: (202) 663-6000

Mark A. Ford
**WILMER CUTLER PICKERING HALE
AND DORR LLP**
60 State Street
Boston, MA 02109
Tel: (617) 526-6423

*Counsel for Plaintiff/Counter-Defendant
Apple Inc.*

Dated: September 13, 2023

Irvine, CA 92614
Knobbe.MasimoDE@knobbe.com

Brian Horne
KNOBBE, MARTENS, OLSON & BEAR, LLP
1925 Century Park E., Suite 600
Los Angeles, CA 90067
Knobbe.MasimoDE@knobbe.com

Adam Powell
KNOBBE, MARTENS, OLSON & BEAR, LLP
3579 Valley Centre Drive, Suite 300
San Diego, CA 92130
Knobbe.MasimoDE@knobbe.com

*Counsel for Defendant/Counter-Claimant
Masimo Corporation, Defendant Sound
United, LLC, and Counter-Claimant Cercacor
Laboratories, Inc.*

IT IS SO ORDERED this ____ day of _____, 2023.

The Honorable Jennifer L. Hall